



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Drug Enforcement Administration Employees - Use of Foreign Air Carriers to Avoid Terrorist Threats

File: B-235495

Date: August 23, 1989

DIGEST

Where the Drug Enforcement Administration follows its proposed procedure in granting authority to employees, threatened by terrorists acts, to travel on foreign flag air carriers to avoid the threats, the Comptroller General will not question the agency's determinations that the use of a foreign carrier is necessary to protect the employees' safety. In these circumstances use of the foreign carrier is considered a necessity as provided under the guidelines implementing the Fly America Act.

DECISION

The Drug Enforcement Administration (DEA) asks whether the agency may approve travel abroad by its employees on foreign flag air carriers in lieu of U.S. flag air carriers in certain circumstances to avoid terrorist threats.^{1/} We conclude that DEA may do so under its proposed procedures, and this Office will not disallow expenditures for such travel on foreign flag carriers.

BACKGROUND

The DEA, based on concern for the safety of its employees traveling abroad, asks whether the agency may approve travel on foreign flag carriers to or through certain areas abroad which have "high profiles" of risks of terrorist attack, without violating the so-called Fly America Act, 49 U.S.C. App. § 1517 (1982), which generally requires the use of U.S. flag carriers for government-financed transportation when such carriers are available. DEA states that its employees spend a large amount of time traveling on business that

^{1/} The matter was presented to us by the Assistant Administrator for Operational Support, DEA.

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cannot be postponed, and this puts them at greater risk than the general public. Thus, DEA contends that the exception from the mandatory use of U.S. flag carriers provided in the guidelines implementing the Act, as published in the Federal Travel Regulations (FTR), para. 1-3.6b(3), incorp. by ref., 41 C.F.R. § 101-7.003 (1988),^{2/} covers its employees' situation since safety is a critical component of the agency's transportation needs.

Under the agency's proposed procedure the use of foreign flag carriers would be strictly controlled at the highest level in the agency where requests would be considered on a case-by-case basis; no blanket or multiple person requests would be considered. U.S. flag carriers would be required to be used for departure from the United States. Approval of travel on foreign flag carriers would be granted only upon consideration by the DEA Administrator of individual written requests that are supported by evidence of threats to specific DEA personnel and accompanied by the latest Department of State security threat analysis. Also, cost would be considered in selecting foreign flag carriers.

DISCUSSION

Generally, the Fly America Act, 49 U.S.C. App. § 1517, requires the use of service provided by U.S. flag air carriers for government-financed transportation to the extent such service is "available." See Fly America Act, B-207637, Nov. 10, 1982. The guidelines implementing the Act restate the requirement to use U.S. flag carriers unless travel by a foreign-flag carrier is a matter of "necessity," which is defined to be:

"if a U.S. flag air carrier otherwise available cannot provide the air transportation needed, or use of U.S. flag air carrier service will not accomplish the agency's mission."^{3/}

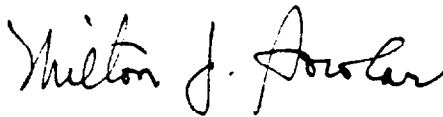
We have recognized that agencies have broad authority to determine whether U.S. flag service otherwise available can provide the air transportation needed to accomplish the agency's mission, and we have recognized that the term "available," within the meaning of the Act, includes the assumption that the service will be provided without

^{2/} The guidelines in the FTR are a restatement of the Comptroller General's Revised Guidelines for Implementation of the Fly America Act, B-138942, March 31, 1981.

^{3/} FTR, para. 1-3.6b(2) and (3).

unreasonable risk to the traveler's safety. 57 Comp. Gen. 519 (1978). See also Richard H. Howarth, B-193290, Feb. 15, 1979.

Evidence of terrorist threats to DEA employees traveling abroad could provide a justification for determining that travel by a U.S. flag carrier in the circumstances DEA describes would be an unreasonable risk to the employees' safety. DEA has broad authority to make such a determination, which would provide the basis for concluding that U.S. flag carriers were not "available" within the meaning of the Fly America Act. Where the determination is made under the procedures DEA describes, we would not question the use of the foreign carrier. The employees' vouchers, however, should be accompanied by the certificate required by FTR, para. 1-3.6c(3).



Acting Comptroller General
of the United States